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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/649,412	08/27/2003	Roger P. Jackson	10,321	5307
7590 John C. McMahon PO Box 30069 Kansas City, MO 64112	08/29/2007		EXAMINER SHAFFER, RICHARD R	
			ART UNIT 3733	PAPER NUMBER
			MAIL DATE 08/29/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)
	10/649,412	JACKSON, ROGER P.
Examiner	Art Unit	
Richard R. Shaffer	3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 02 July 2007.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1,3,5-7,13-15,17,19-21,27-29,33-35,41-43,47-49 and 55-57 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1,3,5-7,13-15,17,19-21,27-29,33-35,41-43,47-49 and 55-57 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a))

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date . . .

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ .
5) Notice of Informal Patent Application
6) Other: See Continuation Sheet.

Continuation of Attachment(s) 6). Other: Dictionary.com Results for "concave".

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 2nd, 2007 has been entered.

Priority

In the most recent petition decision mailed on March 19th, 2007, applicant was instructed to file a requested for continued examination with the petition to accept an unintentionally delayed benefit claim, the surcharge, and an amendment that adds the proper reference to the first sentence of the specification or an ADS. Applicant complied with the request for continued examination and an amendment to the specification, however failed to file an additional petition. Therefore, applicant has still failed to properly claim priority to application 09/644,722 filed on August 23rd, 2000 and issued as U.S. Patent No. 6,666,888 on December 23rd, 2003.

Further, even if applicant properly files for priority back to application 09/644,722, there are currently no claims eligible for priority back to the filing date of August 23rd, 2000. Independent claims 1, 13-15, 27-29, 41-43, 55 and 56 all recite a specific type of material the device is made from. There is no support found in either application 09/644,722 as well as 09/729,600 for such a limitation. Therefore, the limitation is only

granted the filing date of the current application, which is August 27th, 2003. Applicant's final independent claim 57 recites the limitation "concave" of which the drawings in application number 09/644,722 clearly do not support as additionally evidenced by the attached Dictionary.com definition results for "concave."

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 57 is rejected under 35 U.S.C. 102(b) as being clearly anticipated (see Figures 1-7) by Jackson (US Patent Application Publication 2002/0068973).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, 5-7, 13-15, 17, 19-21, 27-29, 33-35, 41-43, 47-49, 55 and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jackson (US Patent Application Publication 2002/0068973).

Jackson discloses all of the claimed structure of the current application (see Figures 1-7) except for the device being made from a biologically inactive metal (claims

1, 13, 14), biologically inactive non-metal (claims 15, 27, 28), biologically active bone-based material (claims 29, 41, 42), or a non-bone based material (claims 55 and 56).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the device of Jackson from a material such as a biologically inactive metal, biologically inactive non-metal, biologically active bone based material, or a biologically active non-bone based material since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Response to Arguments

Applicant's arguments filed July 2nd, 2007 have been fully considered but they are not persuasive. As explained previously in the current Office Action, applicant has failed to properly claim priority to application 09/644,722 due to not submitting an additional petition. Further, as explained previously, even if proper priority is claimed and granted, the claims are currently not fully supported by the parent application and therefore subject to the new filing date of the instant application of August 27th, 2003.

Conclusion

All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued

examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard R. Shaffer whose telephone number is 571-272-8683. The examiner can normally be reached on Monday-Friday (7am-5pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Richard Shaffer
August 23rd, 2007



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concave

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Dictionary.com Unabridged (v 1.1) - Cite This Source

con·cave   [adj., v. **kon-keyv**, **kon-keyv**; n. **kon-keyv**] Pronunciation Key - Show IPA Pronunciation *adjective, noun, verb, -caved, -cav·ing.*

-adjective

1. curved like a segment of the interior of a circle or hollow sphere; hollow and curved. Compare CONVEX (def. 1).
2. *Geometry.* (of a polygon) having at least one interior angle greater than 180°.
3. *Obsolete.* HOLLOW.

-noun

4. a concave surface, part, line, or thing.
5. *Machinery.* a concave piece, as one against which a drum rotates.

-verb (used with object)

6. to make concave.

[Origin: 1375-1425; late ME (< MF) < L *concavus*, hollow. See CON-, CAVE]

—Related forms

con·cave·ly, *adverb*

Dictionary.com Unabridged (v 1.1)

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2006.

[American Heritage Dictionary](#) - [Cite This Source](#)

con·cave   (kōn-kāv', kōn'kāv') [Pronunciation Key](#)

adj. Curved like the inner surface of a sphere.

n. A concave surface, structure, or line.

tr.v. con·caved, con·cav·ing, con·caves

To make concave.

[Middle English, from Latin *concavus* : *com-*, *intensive pref.*; see **com-** + *cavus*, *hollow*; see *keuə-* in Indo-European roots.]

con·cave'ly *adv.*, con·cave'ness *n.*

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[Online Etymology Dictionary](#) - [Cite This Source](#)

concave

1571, from L. *concavus* "hollow," from *com-* intensive prefix + *cavus* "hollow" (see cave (n.)).

Online Etymology Dictionary, © 2001 Douglas Harper

[WordNet](#) - [Cite This Source](#)

concave

adjective

curving inward [ant: bulging]

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[Kernerman English Multilingual Dictionary \(Beta Version\)](#) - [Cite This Source](#)

concave [kōn'keiv] *adjective*

(of an object or surface) curved inwards

Example: Spoons are concave.

Arabic: مُقْبَلٌ

Japanese: 凹形の

Chinese (Simplified): 凹的

Korean: 오목한

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<i>Danish</i> : konkav; hul	<i>Lithuanian</i> : įgaubtas, įdubės
<i>Dutch</i> : concaaf	<i>Norwegian</i> : buet
<i>Estonian</i> : nõgus	innover, konkav
<i>Finnish</i> : kovera	
<i>French</i> : concave	<i>Polish</i> : wkłesły
<i>German</i> : konkav	<i>Portuguese (Brazil)</i> : côncavo
<i>Greek</i> : κοιλος	<i>Portuguese (Portugal)</i> : côncavo
<i>Hungarian</i> : homorú	<i>Romanian</i> : concav
<i>Icelandic</i> : íhvolfur	<i>Russian</i> : вогнутый
<i>Indonesian</i> : cekung	<i>Slovak</i> : vydutý
<i>Italian</i> : concavo	<i>Slovenian</i> : vbokel
	<i>Spanish</i> : cóncavo
	<i>Swedish</i> : konkav, kupig
	<i>Turkish</i> : içbükey

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concave   (kōn'kāv') [Pronunciation Key](#)

Curved inward, like the inside of a circle or sphere.

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con·cave (kōn-kāv', kōn'kāv')

adj.

Curved like the inner surface of a sphere.

n.

A concave surface, structure, or line.

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Main Entry: *con·cave*

Pronunciation: kān-'kāv, 'kān-"

Function: *adjective*

: hollowed or rounded inward like the inside of a bowl

[On-line Medical Dictionary](#) - [Cite This Source](#)
concave

[concave](#): in CancerWEB's On-line Medical Dictionary

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